



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR SB/SE EXAMINATION EXECUTIVES

FROM: *for* K. Steven Burgess */s/* Monica L. Baker
Director, Examination

SUBJECT: New Procedures for Providing Advance General
Notice of the Potential for Third-Party Contacts

The purpose of this memorandum is to announce changes in the procedures used by SB/SE Examination employees for providing the advance general notice of third-party contacts required by IRC section 7602(c)(1) and to provide interim operating guidance which is necessitated by the procedural changes. I believe that these procedural changes will continue to protect taxpayers' rights while reducing the administrative burden on examiners.

Background

Section 3417 of The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98) amended IRC section 7602 to specify in (c)(1), "An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made."

Up to the present time, the advance general notice of potential third-party contact was usually accomplished by issuance of one of several versions of Letter 3164 (see listing of Letters 3164, below, for which these new procedures are intended to substitute). In May 2005, Publication 1, Your Rights as a Taxpayer, was revised to include the advance general notice of potential third-party contact that is required by section 7602. This revision is consistent with RRA '98, section 3417's amendment of IRC section 7602, as the Conference Committee Report (H.R. Conf. Rep. 105-599) for that act section specifies, "It is intended that in general this notice will be provided as part of an existing IRS notice provided to taxpayers." The May 2005 revision of the Publication 1 enables the procedural changes being announced herein to be implemented.

New Procedures

Effective immediately, issuance of the various Letters 3164 or the securing of authorization from the taxpayer to make a third-party contact is no longer required in order to accomplish our obligation to provide the taxpayer with advance general notice of third-party contact prior to making the third-party contact. Rather, the following procedures are to be followed:

1. The Publication 1 (Revised May 2005 and any subsequent revisions containing the advance general notice of third-party contact) is to be provided (mailed by regular mail or personally delivered) to the taxpayer at the time of initial contact and in advance of any third-party contact being made. If the Publication 1 is mailed, then the third-party contact is not to be made before the passage of 10 calendar days in order to provide a reasonable period of time for the taxpayer to receive the Publication 1 containing the advance general notice of third-party contact.

The Publication 1 will serve to satisfy the advance general notice requirement for all tax periods included in the concurrent examination cycle (case) for the same taxpayer. Other taxpayers which are included in the case will, of course, need to be provided with a separate Publication 1. Any tax periods for the same taxpayer which are subsequently examined but which are not part of the concurrent cycle (case) for which a Publication 1 has been issued will require the re-issuance of the publication to accomplish the advance general notice requirement.

2. Document the case activity record with the date and fact of mailing or personal delivery of the Publication 1 to the taxpayer. It is extremely important to document the fact that Publication 1 has been provided to the taxpayer in advance of any third-party contact so that we can demonstrate that the provisions of IRC 7602(c)(1) and other IRC provisions have been observed.

If initial contact by the examiner with the taxpayer is made by telephone, Publication 1 is to be mailed to the taxpayer with the examination appointment confirmation letter, as per 4.10.2.7.4.1, Contacting the Taxpayer By Telephone.

If initial contact with the taxpayer is by mail, Publication 1 is to be mailed with the initial contact letter as specified in the Acting Director, Examination Policy's memorandum dated November 3, 2005, the subject of which is: Use of the Publication 1, and IRM 4.10.2.7.4.2, Contacting the Taxpayer By Letter.

If the initial contact with the taxpayer is face-to-face, then personally deliver the Publication 1 at the time of initial contact.

In keeping with the separate notice requirements of IRM 4.10.1.6.8.1 for joint return situations, the Publication 1 containing the advance general notice of third-party contact is to be issued separately to each spouse and the case activity record is to be documented with the fact that separate notices have been provided.

Finally, the authorized representative, if any, is to be provided a copy of the Publication 1 in accord with our normal procedures of providing copies to the representative of correspondence with the taxpayer, unless the taxpayer has indicated that such copies should not be given to the representative, and the case activity record is to be documented with the fact that a copy of the Publication 1, as well as any other correspondence, has been provided to the representative.

The following guidelines must be observed when implementing and using the new procedures for providing the advance general notice of third-party contact:

1. The procedures contained in this memorandum are to be used henceforth by SB/SE Examination employees in those situations when the examiner would have previously issued either Letter 3164-C (DO) – used in situations involving nonfilers within the jurisdiction of Examination, Letter 3164-E (DO) - generally used in Special Enforcement Program examinations, Letter 3164-F (DO) - used if the third-party contact would be made to verify information or Letter 3164-G (DO) - used if the third-party contact would be made to obtain information.

Note: While return preparer penalty investigations and promoter investigations are commonly conducted by SB/SE Examination employees, the procedures contained in this memorandum do not apply to those types of investigations due to the differences in the work processes used in a tax return examination as contrasted with the referenced penalty investigations. In these penalty investigation cases, the Letter 3164-N (DO), Third Party Contact to Preparers, and Letter 3164-P (DO), Third Party Notification for IRC 6700/6701 investigations, should still be issued for return preparer penalty investigations and promoter investigations, respectively, according to existing procedures.

2. There are no changes to our operating guidelines which hold that the taxpayer is the primary source of information with respect to the taxpayer's return and attempts should be made to obtain (or verify), to the greatest extent practicable, the required information from the taxpayer before seeking to obtain (or verify) the information from third parties. As specified in IRM 4.10.3.2.1.4(2), pertaining to third-party interviews, information will be collected, to the greatest extent practicable, directly from the taxpayer to whom it relates.

It is very important to document the case file with requests to the taxpayer (generally, copies of Information Document Requests (IDRs)) to obtain or verify the relevant information and for the case file documentation, considered in total, to support the decision to obtain or verify the relevant information via a third-party contact. While a separate specific notice is not required, there is nothing intended in the above procedures to preclude the examiner from notifying the taxpayer (orally or in writing) that a third-party contact is about to be made if, in the examiner's judgment, such notice will likely result in the taxpayer providing the relevant information.

3. These procedures do not change the Service's interpretations of which contacts are third-party contacts and do not in any manner change the process for submission of information regarding third parties contacted (via Form 12175, Third-Party Contact Report Form) or change the procedures for maintaining a list of third parties contacted by means of the established database.
4. While these procedures are effective immediately, the effective date should not be read to disturb any situation when the advance general notice of third-party contact has been or is in the process of being accomplished by means of the Letters 3164 or when the third-party contact has been authorized by the taxpayer.

If you have any questions or need additional information, please contact Sherri L. Brown, Acting Director, Examination Policy at (202) 283-2170 or your staff members should contact Ron Hartman, Examination Policy Analyst at (856) 321-2398.

Attachment

cc: Commissioner, Large and Mid-Size Business Division
Commissioner, Small Business/Self-Employed Division
Commissioner, Tax Exempt and Government Entities Division
Commissioner, Wage & Investment Division
Chief, Appeals
SB/SE Director, Campus Compliance Services
SB/SE Director, Fraud/BSA
SB/SE Director, Specialty Programs

